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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,181	10/29/2003	Roberto Carlos Perez	19508	6535
23556	7590	07/18/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			KIDWELL, MICHELE M	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

3761

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/696,181

**Applicant(s)**

PEREZ ET AL.

**Examiner**

Michele Kidwell

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 17-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/20/04;3/3/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group 1 in the reply filed on April 27, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 17 – 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on April 27, 2006.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities: “the apertured cover layer” in line 1 lacks antecedent basis. Appropriate correction is required.

Claim 6 is objected to because of the following informalities: “the surfactants” in line 1 lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites a cover layer comprising a user facing surface and a bottommost surface. The claim also requires a sorbent layer to be disposed between the cover layer and the bottommost surface. It is unclear how the sorbent layer can be disposed between the cover layer and the bottommost layer when the bottommost layer is the cover layer? Clarification and/or correction are required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 5, 7 – 8, 11 – 12 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ouellette et al. (US 5,431,643).

With respect to claims 1, 5, 7 and 12, Ouellette et al. (hereinafter “Ouellette”) discloses an absorbent article, comprising: a cover layer (28) comprising a user facing surface and a bottommost surface, wherein the user facing surface has ink indicia imprinted thereon (col. 5, lines 42 – 44) with surfactant (col. 5, lines 32– 33) and/or a

Art Unit: 3761

botanical extract; and a sorbent (32) layer disposed between the cover layer and the bottommost surface as set forth in col. 6, lines 59 – 60.

With reference to claim 2, Ouellette discloses an absorbent article that comprises a cover material that is apertured by a method of vacuum aperturing, pin aperturing, hydroentanglement, ultrasonic and a combination thereof as set forth in col. 4, line 66 to col. 5, line 6.

Regarding claim 3, Ouellette discloses an absorbent article wherein the apertured cover layer comprises a tapered opening surrounding each aperture and extending from the user-facing surface to the bottommost surface as set forth in col. 4, line 66 to col. 5, line 6.

The examiner contends that since Ouellette discloses the same method as disclosed by the instant application on page 7, lines 5 – 9 which result in the tapered openings, one can reasonably expect the topsheet of Ouellette to result in a structure identical to that claimed.

With respect to claim 4, Ouellette discloses an absorbent article wherein the indicia comprises an ink that has a second surfactant as set forth in col. 6, lines 33 – 36.

As to claim 8, Ouellette discloses an absorbent article wherein the cover layer comprises a polyolefin as set forth in col. 4, lines 67 – 65.

Regarding claim 11, Ouellette discloses an absorbent article wherein the surfactant is non-ionic as set forth in col. 5, lines 32 – 33.

As to claim 16, Ouellette discloses an absorbent article wherein the ink indicia comprises a particulate-type ink as set forth in col. 5, lines 42 – 60.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 9 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouellette et al. (US 5,431,643).

The difference between Ouellette and claim 6 is the provision that the surfactants are present in a specific amount.

It would have been obvious to one of ordinary skill in the art to modify the amount of surfactant in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range is within the level of ordinary skill in the art.

The difference between Ouellette and claim 9 is the provision that the surfactant has a specific hydrophilic-lyophilic balance.

It would have been obvious to one of ordinary skill in the art to modify the hydrophilic-lyophilic balance of the surfactant in order to determine the most effective product since it has been held that where the general conditions of a claim are

disclosed in the prior art, discovering the optimum or workable range is within the level of ordinary skill in the art.

The difference between Ouellette and claim 10 is the provision that the apertured cover layer has a specific open area.


It would have been obvious to one of ordinary skill in the art to modify the open area of the cover layer in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range is within the level of ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Michele Kidwell  
Primary Examiner  
Art Unit 3761